

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

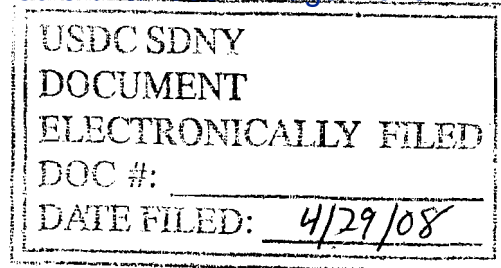
-----X  
SHARON JACKSON et al.,

Plaintiffs,

-against-

EXECUTIVE OFFICE FOR UNITED STATES  
ATTORNEYS et al.,

Defendants.  
-----X



: 07 Civ. 6591 (RJH) (DF)

:  
: **REPORT AND**  
: **RECOMMENDATION**

**TO THE HONORABLE RICHARD J. HOLWELL, U.S.D.J.:**

Sharon Jackson ("Plaintiff"), proceeding *pro se*, has moved pursuant to Rule 55(b) of the Federal Rules of Civil Procedure for a default judgment against defendant Executive Office for United States Attorneys ("Defendant"),<sup>1</sup> contending that Defendant has failed to move, answer or otherwise respond to Plaintiff's Amended Complaint within the time period dictated by the Federal Rules. Yet as the docket reflects that Defendant has, in fact, timely responded to the Amended Complaint, I recommend that Plaintiff's motion for a default judgment (Dkt. 11) be denied.

Plaintiff commenced this action by filing a Complaint on July 25, 2003 (Dkt. 2), alleging violations of the Freedom of Information Act, 5 U.S.C. § 552. On October 5, 2007, prior to Defendant's service of any responsive pleading, Plaintiff filed an Amended Complaint. (Dkt. 4.)

According to Plaintiff's Affidavit of Service, Defendant was served with a Summons and the Amended Complaint on November 23, 2007. (Dkt. 8.) Under Rule 12(a)(3)(A) of the

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<sup>1</sup> Although Plaintiff twice uses the term "et al." in the caption of the Amended Complaint, no other plaintiffs or defendants are specifically identified in her pleading.

Federal Rules of Civil Procedure, Defendant, as an agency of the United States, would then have been required to move, answer or otherwise respond to the Amended Complaint within 60 days, or by January 22, 2008. By letter dated January 22, 2008, Defendant requested that its time to respond to Plaintiff's pleading be extended to March 24, 2008, and the Court granted that extension by Order dated January 25, 2008. (Dkt. 10 (Mem. Endors.).)<sup>2</sup>

By letter dated March 24, 2008, Defendant then sought a second extension of time to respond to the Amended Complaint, and the Court granted a second extension by Order dated March 25, 2008. (Dkt. 12.) Pursuant to the Court's March 25th Order, Defendant's response to the Amended Complaint became due on April 3, 2008. (*See id.*) On April 3, 2008, Defendant timely filed a motion to dismiss the Amended Complaint. (Dkt. 13.) Accordingly, Defendant has not defaulted in responding to the Amended Complaint, and I therefore recommend that Plaintiff's motion for a default judgment be denied.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections to this Report and Recommendation. *See also* Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Richard J. Holwell, United States Courthouse, 500 Pearl Street, Room 1950, New York, New York 10007, and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, Room 525, New York, New York, 10007. Any requests for an extension of time for filing objections must be directed to Judge Holwell.

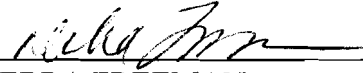
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<sup>2</sup> Plaintiff, who is incarcerated, may not have received notice of the Court's January 25th Order, as, on February 20, 2008, she made the instant motion for a default judgment against Defendant.

FAILURE TO FILE OBJECTIONS WITHIN TEN (10) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York  
April 29, 2008

Respectfully submitted,

  
DEBRA FREEMAN  
United States Magistrate Judge

Copies To:

Hon. Richard J. Holwell, U.S.D.J.

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